

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
OHIO, EASTERN DIVISION

Brian L. Anderson v. Jay Forshey, Warden, Noble Correctional
Institution

Anderson v. Forshey, Case No. 2:25-cv-00459 (S.D. Ohio Jan. 6, 2026) · No. 2:25-cv-00459 · Decided January
6, 2026

SUMMARY

The United States District Court for the Southern District of Ohio reviews Brian L. Anderson’s objections to a magistrate judge’s recommendation to dismiss his habeas corpus petition. The court holds that *Stone v. Powell* bars review of Anderson’s Fourth Amendment suppression claim, rejects his related Fifth and Fourteenth Amendment due process and *Faretta* arguments, and defers under AEDPA to the state court’s decision concerning sufficiency of the evidence. The court adopts the recommendation, dismisses the petition with prejudice, denies a certificate of appealability, and certifies that an appeal would be objectively frivolous.

CASE DETAILS

COURT	United States District Court for the Southern District of Ohio, Eastern Division
WRITING FOR THE COURT	Sarah D. Morrison
JURISDICTION	United States District Court for the Southern District of Ohio, Eastern Division
DECIDED	January 6, 2026
DOCKET	2:25-cv-00459
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner filed a 28 U.S.C. § 2254 habeas petition challenging state convictions for drug and firearms offenses. After the magistrate judge recommended dismissal, petitioner filed objections, which the district court reviewed de novo and overruled.
STANDARD OF REVIEW	De novo review of the magistrate judge's Report and Recommendations and objections under 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b). For the merits of the habeas claims, review was governed by 28 U.S.C. § 2254(d)(1), including whether the state-court decision was contrary to or an objectively

	unreasonable application of clearly established Supreme Court precedent.
PRECEDENTIAL VALUE	Unknown; district-court decision with no reported citation identified
PARTIES	Brian L. Anderson v. Jay Forshey, Warden, Noble Correctional Institution

TOPICS

federal habeas corpus

fourth amendment

due process

habeas corpus

appellate procedure

PRACTICE AREAS

federal habeas corpus

criminal procedure

constitutional law

post-conviction relief

QUESTIONS PRESENTED

1. Whether *Stone v. Powell* barred federal habeas review of Anderson's Fourth Amendment suppression claim when Ohio provided a pretrial suppression motion, an evidentiary hearing, and appellate review.
2. Whether Anderson established a due process violation based on the state courts' alleged failure to admit or consider a preliminary-hearing transcript and body-camera footage.
3. Whether Anderson established a constitutional violation based on insufficient evidence that he knowingly possessed the shotgun.
4. Whether Anderson had a constitutional right to participate in the criminal proceedings while represented by counsel under *Faretta v. California*.

HOLDINGS

1. Federal habeas review of Anderson's Fourth Amendment claim was barred because Ohio provided a full and fair opportunity to litigate the claim through a pretrial suppression motion, a hearing at which witnesses and exhibits could be presented, and appellate review.
2. Anderson failed to establish that the state court decision rejecting his due process claim was contrary to or an objectively unreasonable application of clearly established Supreme Court precedent.
3. The Constitution does not provide a right to hybrid representation in which a criminal defendant represents himself while also being represented by counsel.
4. Anderson was not entitled to habeas relief on his insufficient-evidence claim because the state appellate court applied the *Jackson v. Virginia* standard reasonably and its decision was entitled to AEDPA deference.

KEY QUOTATIONS

“Unless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be.”

FACTUAL BACKGROUND

Anderson was convicted in Ohio of drug and firearms offenses, including knowingly possessing a piece of dangerous ordnance, identified as a shotgun. The shotgun was found between the passenger seat where Anderson was seated and the passenger door. Anderson challenged the admission or consideration of body-camera footage and a municipal-court preliminary-hearing transcript, and later argued that the State had not proved that he knowingly possessed the shotgun.

PROCEDURAL HISTORY

The magistrate judge recommended dismissal of Anderson's habeas petition, concluding that his Fourth Amendment claim was barred by *Stone v. Powell* and that the state appellate court's sufficiency-of-the-evidence decision was entitled to deference under AEDPA. The district court reviewed the objections de novo, adopted the Report and Recommendations, overruled the objections, dismissed the petition with prejudice, denied a certificate of appealability, and certified that an appeal would be objectively frivolous and should not proceed in forma pauperis.

DISPOSITION

dismissed

CASES CITED

- *Stone v. Powell*, 428 U.S. 465 (1976)
- *Hutto v. Davis*, 454 U.S. 370, 375 (1982)
- *Litman v. Massachusetts Mut. Life Ins. Co.*, 825 F.2d 1506 (11th Cir. 1987)
- *State v. Perry*, 10 Ohio St. 2d 175 (1967)
- *Faretta v. California*, 422 U.S. 806, 835 (1975)
- *McKaskle v. Wiggins*, 465 U.S. 168 (1984)
- *Jackson v. Virginia*, 443 U.S. 307 (1979)
- *State v. Anderson*, *supra*, ¶ 55

OPINION

Anderson

PER CURIAM.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

EASTERN DIVISION

BRIAN L. ANDERSON,

Petitioner, Case No. 2:25-cv-00459 - vs - Chief Judge Sarah D. Morrison Magistrate Judge Michael R. Merz

JAY FORSHEY, WARDEN,

Noble Correctional Institution, Respondent.

DECISION AND ORDER

This habeas corpus action, brought pro se by Petitioner Brian Anderson to obtain relief from his convictions for drug and firearms offenses, is before the Court on Petitioner's Objections (ECF No. 15) to the Magistrate Judge's Report and Recommendations recommending dismissal (ECF No. 14). As required by 28 U.S.C. § 636(b) and Fed.R.Civ.P. 72(b), the Court has reviewed the case de novo with particular attention to Petitioner's Objections. The Report focuses on Petitioner's two grounds for relief: failure to suppress seized evidence, asserted by Petitioner to violate the Fourth, Fifth, and Fourteenth Amendments, and conviction upon insufficient evidence in violation of the Due Process Clause of the Fourteenth Amendment. The Report concludes review of the merits of the Fourth Amendment claim is barred by *Stone v. Powell*, 428 U.S. 465 (1976), and the Ohio Seventh District's decision that there was sufficient evidence is entitled to deference under the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. No 104-132, 110 Stat. 1214) (the "AEDPA"). Petitioner begins his Objections by noting that the courts used to expand the scope of habeas corpus, but have recently constricted that scope. That is certainly true of the *Stone v. Powell* decision and of AEDPA. But lower federal courts such as this one must conform its decisions to those of Congress and the United States Supreme Court. The Supreme Court has said "Unless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be." *Hutto v. Davis*, 454 U.S. 370, 375 (1982); *Litman v. Massachusetts Mut. Life Ins. Co.*, 825 F.2d 1506 (11th Cir. 1987). I. Fourth Amendment Claim Petitioner objects to the application of *Stone* because he claims he did not get a full and fair opportunity to litigate his Fourth Amendment claims in that the state courts did not allow introduction of the searching officer's body cam footage or the transcript of Petitioner's municipal court preliminary hearing. The motion to suppress hearing has been transcribed and is filed at State Court Record, ECF No. 10-1. It contains no reference to proffering the preliminary hearing transcript or the body cam footage. Challenged on this point in the Report, Petitioner objects that he did indeed call these exclusions to the attention of the Court of Appeals, but he cites filings made long after trial in variously titled pro se filings treated by the Ohio courts as post-conviction petitions under Ohio Revised Code § 2953.21. (See ECF No. 15, PageID 1016). Ohio's procedure for litigating Fourth Amendment claims parallels that in the federal courts in prosecutions brought by the United States. The Ohio Rules of Criminal Procedure provide for filing a pre-trial motion to suppress and for a hearing on that motion outside the presence of a jury. Petitioner received that process, including a hearing at which he could have called witnesses or tendered exhibits. A trial court's ruling on that motion is subject to appeal and the ruling was appealed in this case. No case law known to this Court requires that the "full and fair opportunity" requirement is satisfied only if a State allows Fourth Amendment issues to be considered de novo after conviction. Because Ohio's doctrine of res judicata bars collateral consideration of matters which could have been

raised on direct appeal (See *State v. Perry*, 10 Ohio St. 2d 175 (1967)), Petitioner's objection to applying *Stone* is without merit. The Magistrate Judge's recommendation to bar consideration of Fourth Amendment claims is adopted and Petitioner's Objections to that application are overruled.

II. Due Process Claims (Fifth and Fourteenth Amendments) The Magistrate Judge limited his consideration of Ground One to the Fourth Amendment claim it contains. Petitioner objects that, as pleaded, Ground One also includes due process claims under the Fifth and Fourteenth Amendments. The substance of these claims again appears to be the failure or refusal to consider the preliminary hearing transcript and the bodycam footage (or at least some portion of the footage). To prevail on such a claim, a habeas petitioner must show that the state court decision of the claim was contrary to or an objectively unreasonable application of clearly established Supreme Court precedent. 28 U.S.C. § 2254(d)(1). Petitioner has not made that showing. In particular, there is no Supreme Court precedent known to the Court which requires admission of a preliminary hearing transcript or an entire length of body cam footage at trial as a matter of due process. At several points in his Objections, Petitioner complains that he was not allowed to participate during times when he was represented by counsel, which he claims violates *Faretta v. California*, 422 U.S. 806, 835 (1975). *Faretta* protects the right of a criminal defendant to represent himself in a criminal case. But there is no constitutional right to hybrid representation, with a defendant representing himself and also having counsel. *McKaskle v. Wiggins*, 465 U.S. 168 (1984). From many examples in the State Court Record, it appears that Petitioner wished to participate even when he had counsel. The Constitution does not recognize such a right.

III. Insufficient Evidence In his Second Ground for Relief, Petitioner asserts he was convicted on insufficient evidence. The Report concluded that the Seventh District Court of Appeals applied the correct governing standard set forth in *Jackson v. Virginia*, 443 U.S. 307 (1979), and its application was objectively reasonable and therefore entitled to deference under AEDPA. The Objections focus on the asserted failure of the State to prove that Petitioner knowingly possessed the shotgun he was convicted of possessing. "Knowingly" is an essential element of the one of the offenses of which Petitioner was convicted: Petitioner was charged and convicted of knowingly possessing a piece of dangerous ordnance, a shotgun. But on direct appeal Petitioner did not challenge proof of the knowingly element, only whether the weapon had been shown to be operable. *State v. Anderson*, supra, ¶ 55. The Court went on to find there was indeed sufficient proof of the other elements, including a stipulation that Anderson was under a disability by virtue of a pending drug indictment in another county. *Id.* Petitioner contests the finding that he knew he was in possession of the shotgun (which was found between the passenger seat where he was seated and the passenger door) by claiming it was covered by debris. (ECF No. 15, PageID 1023). He cites no record reference for that asserted fact. He certainly did not testify to that fact at trial: the trial transcript shows he did not testify. (ECF No. 10-2, PageID 744).

IV. Conclusion Having reviewed the Report de novo, the Court adopts it and overrules Petitioner's Objections. The Clerk will enter judgment dismissing the Petition with prejudice. Because reasonable jurists would not

disagree with this conclusion, the Petitioner is denied a certificate of appealability and the Court certifies to the Sixth Circuit that any appeal would be objectively frivolous and should not be permitted to proceed in forma pauperis. IT IS SO ORDERED. /s/ Sarah D. Morrison

SARAH D. MORRISON

UNITED STATES DISTRICT JUDGE

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